

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
150.310	Amendment
- 4) Statutory Authority: 20 ILCS 2505/2505-90
- 5) A Complete Description of the Subjects and Issues Involved: The current regulation provides, in relevant part, that a nonresident purchaser of a motor vehicle is not liable for use tax on the purchase of a motor vehicle delivered in this State unless the motor vehicle is used in this State for 30 or more days in a calendar year. Public Act 96-1035 amended the Illinois Vehicle Code (625 ILCS 5/3-603) to provide that a nonresident purchaser of a motor vehicle is not liable for use tax unless the motor vehicle is used in this State for more than 30 days. This rulemaking makes this regulation consistent with the Vehicle Code, which provides for a longer non-taxable use period.

This rulemaking also extends the sunset date until June 30, 2016, for the exemption for taxpayers engaged in centralized purchasing activities who temporarily store purchased property in Illinois.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? Yes with respect to the exemption for taxpayers engaged in centralized purchasing activities who temporarily store the property in Illinois, which will sunset June 30, 2016.
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Debra Boggess

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13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: This proposed rulemaking will not impact or require any changes to the current requirements.
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2014

The full text of the Proposed Amendment begins on the next page:

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section 150.310 Exemptions to Avoid Multi-State Taxation

- a) To prevent actual or likely multi-state taxation, the tax shall not apply to the use of tangible personal property in this State under the following circumstances:
 - 1) The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by that individual for his or her own use while temporarily within this State or while passing through this State;
 - 2) the use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce; or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, as long as so used by the interstate carriers for hire. When tangible personal property is purchased by a lessor under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire who did not pay Use Tax to the retailer, the lessor (by the last day of the month following the calendar month in which the property reverts to the use of

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the lessor) shall file a return with the Department and pay the tax upon the fair market value of the property on the date of the reversion. For more details concerning this exemption, see 86 Ill. Adm. Code 130.340 of the Retailers' Occupation Tax regulations; the same principles apply for Use Tax purposes;

- 3) *the use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase or use of that property, to the extent of the amount of the tax properly due and paid in the other state; for this purpose, "state" includes the District of Columbia [35 ILCS 105/3-55(d)];*
- 4) the temporary storage, in this State, of tangible personal property acquired outside this State that, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State;
- 5) the temporary storage in this State of building materials and fixtures acquired either in this State or outside this State by an Illinois registered combination retailer and construction contractor, and that the purchaser thereafter uses outside this State by incorporating the property into real estate located outside this State;
- 6) *beginning on January 1, 2002 and through June 30, 2016 2014, the use of tangible personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. [35 ILCS 105/3-55(j)]*
 - A) "Centralized purchasing" means the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.
 - i) For example, a business that maintains offices in several states and maintains storage facilities in Illinois purchases office

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equipment from an Illinois retailer, takes delivery of those items in Illinois and then stores them at its Illinois warehouse until they are shipped to its offices outside Illinois for use there can qualify for the exemption.

- ii) For example, a lessor that purchases an item from an Illinois retailer specifically to fulfill its obligations under an existing lease with a lessee located outside Illinois, takes delivery of that item in Illinois and then stores that item at an Illinois warehouse until it is shipped to its lessee's out-of-State location can qualify for the exemption so long as the item is used solely outside Illinois.
 - iii) However, a lessor who purchases an item that is not dedicated to an existing lease with an out-of-State lessee, takes delivery of that item in Illinois and then places it in an Illinois rental inventory cannot qualify for the exemption even if the item is subsequently leased to an out-of-State lessee. This is true because, in Illinois, lessors are deemed to be the users of items purchased for rental inventories and placing an item in a rental inventory does not constitute storage.
- B) "Good standing" means the taxpayer has no final liability that the taxpayer is failing to pay. For purposes of this Section, final liability includes a notice of tax liability that has become final, an admitted liability, or a math error.
- C) Persons who wish to take advantage of this expanded temporary storage exemption must apply in writing to the Department to obtain an Expanded Temporary Storage Permit. Expanded Temporary Storage Permits cannot be assigned or transferred except when the holder of the permit is purchasing from an unregistered de minimis serviceman providing services as described in 86 Ill. Adm. Code 140.108. Other than this, only the person to whom the Expanded Temporary Storage Permit was issued by the Department may use that permit as described in this Section.
- D) Persons holding a valid Expanded Temporary Storage Permit may claim the expanded temporary storage exemption by providing their Illinois suppliers with a certification that the tangible personal property received in Illinois will be temporarily stored in Illinois for the purpose of being subsequently transported outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and

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thereafter used or consumed solely outside this State. The certification must identify the seller, the purchaser, and the property, and include the purchaser's Expanded Temporary Storage Permit number and signature.

- i) If all of an Expanded Temporary Storage Permit holder's purchases qualify for the expanded temporary storage exemption, the Expanded Temporary Storage Permit holder may provide his or her supplier a blanket certificate of expanded temporary storage.
 - ii) If an Expanded Temporary Storage Permit holder knows that a certain percentage of all his or her purchases from a given seller will qualify for the expanded temporary storage exemption, he or she may provide a blanket certificate of expanded temporary storage stating that a designated percentage of purchases qualify for the expanded temporary storage exemption.
- E) In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is taken out of storage and not transported outside this State for use or consumption, but is instead used or consumed in Illinois, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois, then, instead of being transported outside the State for use or consumption, is removed from inventory and used in Illinois, tax will be due at the retailer's rate applicable in Naperville. The permit holder must pay the tax directly to the Department on forms prescribed by the Department, not later than the twentieth day of the month following the month in which the property was removed from inventory.
- F) In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is temporarily stored in Illinois and transported outside this State for use or consumption, but subsequently returned to Illinois and used here, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois and transported outside this

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State for use or consumption, but subsequently returned to Illinois and used here, tax will be due at the retailer's rate applicable in Naperville. Depreciation will be allowed as provided in Section 150.105(a). Also, credit shall be given for tax paid in another state in respect to the sale, purchase or use of the property, to the extent of the amount of the tax properly due and paid in the other state, as provided in subsection (a)(3) of this Section.

- G) Permit holders who assume the liability for the Retailers' Occupation Tax and any applicable local Retailers' Occupation Tax are subject to the same rights, remedies, privileges, immunities, powers and duties, and are subject to the same conditions, restrictions, limitations, penalties, and definitions of terms and employ the same modes of procedures as are prescribed for retailers under the Retailers' Occupation Tax Act. For example, if a permit holder fails to timely file the proper return or make the proper payment of tax, that permit holder is not entitled to the 1.75% vendor discount applicable to the sales reported on that return and is subject to penalties and interest under the Uniform Penalty and Interest Act [35 ILCS 735].
- 7) the use, in this State, of a vehicle for which a drive-away decal has been issued under the provisions of 86 Ill. Adm. Code 130.605(b)(1). However, beginning July 1, 2008, if the purchaser of a motor vehicle claims the exemption provided in Section 130.605(b)(1) and the motor vehicle is then used in this State for ~~30 or~~ more than 30 days in a calendar year, the purchaser is liable for Use Tax on the purchase price of that motor vehicle, subject to credit for tax properly due and paid to any other state as provided in subsection (a)(3) of this Section. The assessment of tax under this subsection (a)(7) by the Department is limited to the period for which it may issue a notice of tax liability under the Use Tax Act.
- 8) *beginning July 1, 2007, the use, in this State, of an aircraft described in subsection (a)(8)(A), (B) or (C), as defined in Section 3 of the Illinois Aeronautics Act.*
 - A) *If the aircraft is purchased in this State, all of the following three conditions must be met:*
 - i) *the aircraft leaves this State within 15 days after the later of either the issuance of the final billing for the purchase of the aircraft or the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required by 14 CFR 91.407;*

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- ii) *the aircraft is not based or registered in this State after the purchase of the aircraft; and*
 - iii) *the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(A) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require.*
- B) *If the aircraft is temporarily located in this State for the purpose of a prepurchase evaluation, all of the following conditions must be met:*
 - i) *the aircraft is not based or registered in this State after the prepurchase evaluation; and*
 - ii) *the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(B) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require.*
- C) *If the aircraft is temporarily located in this State for the purpose of a post-sale customization, all of the following conditions must be met:*
 - i) *the aircraft leaves this State within 15 days after the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection, as required by 14 CFR 91.407;*
 - ii) *the aircraft is not based or registered in this State either before or after the post-sale customization; and*
 - iii) *the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(C) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be*

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titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 105/3-55(h-2)]

- D) The exemption provided under subsections (a)(8)(B) and (C) does not apply to tax incurred on any service transactions performed on the aircraft.

- E) For purposes of subsection (a)(8):

"Based in this State" means hangared, stored, or otherwise used, excluding post-sale customizations as defined in this subsection (a)(8)(E), for 10 or more days in each 12-month period immediately following the date of the sale of the aircraft.

"Post-sale customization" means any improvement, maintenance, or repair that is performed on an aircraft following a transfer of ownership of the aircraft.

"Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.

"Registered in this State" means an aircraft registered with the Department of Transportation, Aeronautics Division, or titled or registered with the Federal Aviation Administration to an address located in this State.

- F) *If tax becomes due under this subsection (a)(8) because of the purchaser's use of the aircraft in this State, the purchaser shall file a return with the Department and pay the tax on the fair market value of the aircraft. This return and payment of the tax must be made no later than 30 days after the aircraft is used in a taxable manner in this State. The tax is based on the fair market value of the aircraft on the date that it is first used in a taxable manner in this State. [35 ILCS 105/3-55(h-2)]*

- b) Since exemptions described in subsections (a)(1), (3) and (4) do not exist as far as the Retailers' Occupation Tax is concerned, and since it would therefore serve no purpose to say that the exemptions exist for Use Tax purposes insofar as the seller is merely collecting Use Tax to reimburse himself or herself for Retailers' Occupation Tax on the same transaction, the Department believes that the legislative intention in these references to the acquisition of tangible personal property outside this State was to make the references apply to cases in which the only tax liability that could be involved is Use Tax liability.

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- c) Therefore, exemptions described in subsections (a)(1), (3) and (4) would not apply except when the tangible personal property is acquired outside Illinois by the purchaser in such a way that there is no Retailers' Occupation Tax liability on the part of the seller in the same transaction.
- d) For information as to when sellers do or do not incur Retailers' Occupation Tax liability when shipping the tangible personal property from outside Illinois, see 86 Ill. Adm. Code 130.610 of the Retailers' Occupation Tax regulations.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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